APPOINTMENTS

The PRESIDING OFFICER. The Chair, on behalf of the Republican leader, pursuant to Public Law 112–240, appoints the following as members of the Commission on Long-Term Care: Bruce D. Greenstein of Louisiana, Neil L. Pruitt of Georgia, and Mark J. Warshawsky of Maryland.

ORDERS FOR TUESDAY, FEBRUARY 12, 2013

Mrs. HAGAN. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 10 a.m. on Tuesday, February 12, 2013; that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, and the time for the two leaders be reserved for their use later in the day; that following any leader remarks, the Senate resume consideration of S. 47, the Violence Against Women Act, under the previous order; further, that the Senate recess following disposition of S. 47 until 2:15 p.m. to allow for the weekly caucus meetings.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mrs. HAGAN. There will be up to six rollcall votes beginning tomorrow at 11 a.m. in order to complete action on the Violence Against Women Act.

The State of the Union will be tomorrow evening. Senators will gather at 8:20 p.m. in the Chamber to proceed together as a body.

ORDER FOR ADJOURNMENT

Mrs. HAGAN. If there is no further business to come before the Senate, I ask unanimous consent it adjourn under the previous order, following the remarks of Senator CORNYN.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Texas.

VIOLENCE AGAINST WOMEN REAUTHORIZATION ACT

Mr. CORNYN. Mr. President, I come to the floor to respond to some of the debate on the Violence Against Women Act reauthorization, which I believe misstates the law and the content of the underlying bill specifically as it relates to tribal court jurisdiction.

First of all, I start from the premise that tribal courts should be able to prosecute domestic violence cases that occur on tribal lands involving tribal members. The question is, Under what procedure—what practice—is it appropriate for them to attain jurisdiction over nontribal members who commit these acts of domestic violence whom they wish to prosecute in tribal courts? I am not here to question the integrity of the tribal court system for tribe members. The only question on the table is whether tribal courts, under the law that applies to these tribal courts, is required to protect the constitutional rights of nontribe members whom they seek to assert jurisdiction over.

In order to protect constitutional rights, the Constitution as interpreted by the Federal courts must be applied, and there must be an opportunity given to individuals who are prosecuted in these tribal courts who are not tribal members to appeal to a Federal court if, in fact, they are convicted.

First of all, the distinguished Senator from Washington, Ms. CANTWELL, has said there is a right of removal to Federal court in the underlying bill, and that is incorrect. There is no right of removal to Federal court in the underlying bill. However, in the amendment which I had contemplated offering—which the distinguished bill manager, the chairman of the Judiciary Committee, said is not acceptable to him—would include a right of removal to Federal court under some circumstances. So I want to correct the record: There is no right of removal in the underlying bill to the Federal court that might otherwise correct an unconstitutional provision.

Under the tribal court jurisdiction they operate under the Indian Civil Rights Act, which is, by definition, a statute and not the Constitution. So the rights provided to tribe members and nontribe members under the Indian Civil Rights Act are not constitutional rights. They don't incorporate the Bill of Rights of the U.S. Constitution which would be applicable to any American citizen tried in any State or Federal court. Since Indian or tribal courts claim to be sovereign and don't incorporate those constitutional rights, then American citizens who are not tribal members who would be tried in those tribal courts under the underlying bill would be unconstitutionally deprived of the protections of the Bill of Rights which they have by virtue of the U.S. Constitution.

Secondly, the distinguished Senator from Connecticut, Mr. BLUMENTHAL, argues that habeas corpus protections are sufficient to vindicate the constitutional rights of nontribal members, but that is not the case. Habeas corpus is a remedy which cannot be accessed until direct appeals are exhausted by definition. Since that is the case, under the underlying bill, the maximum length of sentence an individual can be given under the Leahy bill is 1 year. So what would happen is an American citizen, nontribe member, would be tried in a tribal court and would wrongfully be deprived of their constitutional rights under the Bill of Rights. Yet they could not vindicate those rights until such time as they exhausted all direct appeals, and then habeas corpus would be potentially available to them.

The only problem with that is it is very unlikely that would happen before they would have already served their sentence under the underlying bill, which is a maximum of 1 year; thus, the habeas corpus remedy is illusory and is not real.

I hope that helps clarify some of the misunderstandings under the bill and my concerns about it. We start from the premise that domestic violence on tribal lands is a serious problem. With the current situation, these crimes are not deemed sufficiently serious for U.S. attorneys to typically prosecute these cases. They are serious cases. They deserve to be prosecuted but only consistently with the U.S. Constitution. If the tribal courts wish to assert jurisdiction over nontribe members, the only way they should be allowed to do so is if they incorporate the protections of the Bill of Rights. That is something I have proposed to the distinguished chairman of the Judiciary Committee, which he has rejected.

We also have to have a means for an appeal to a Federal court if a nontribe member is convicted in a tribal court. That is not in the underlying bill. It strikes me as somewhat bizarre to have a remedy which is in the form of my amendment which would confer on tribal courts the requirement that they incorporate the provisions of the Bill of Rights when a nontribe member is being tried in a tribal court and that a right to an appeal to a Federal court also be included. That would remove the constitutional objection to the assertion of tribal court jurisdiction over nontribe members, but this has been rejected for some reason that escapes me.

Our only remedy is to go to the House of Representatives once this bill passes the Senate—and it will. Ironically, this is a bill that historically has passed with unanimous agreement—Democrats, Republicans alike. It has not been a political bill. Apparently, in a desire to make it a political statement and to somehow suggest that some people don't believe we ought to prosecute violence against women in tribal courts, an erroneous argument has been made by two Senators, whom I mentioned here, which I hope my statement has corrected. We don't need to go there. There is a commonsense solution, but unfortunately it has been rejected by the chairman of the Judiciary Committee. Our only recourse is to take the Senate bill and reconcile it with a bill that will be passed by the House of Representatives, which I hope will fix this provision and have it resolved in conference in a way that protects victims of domestic violence on tribal lands when perpetrated by nontribe members and when those nontribe members are tried in tribal courts.

I know that sounds a little convoluted, but it is an important constitutional right we are talking about, and I am amazed that such a simple solution, which is right at hand, is being rejected in favor of trying to make some kind of political statement that some Members don't care as much as